

UNDISCLOSED, the State v. Adnan Syed

Undisclosed Explainer:

An Update on the Recent Decision in Adnan's Appeal

May 22, 2015

[0:04] CNN Correspondent Nick Valencia

On Friday, the Maryland court of appeals agreed to hear Adnan Syed's case... It's a huge victory for the 33-year-old...

[0:11] Unidentified female voice

In a stunning twist, the Maryland Court of Special Appeals ruled in favor of Syed... without any hearing... and sent the case back to the trial court...

[0:20] Rabia Chaudry

Hi, Aunty Shamim, this is Rabia.

Shamim Syed

Hi, Rabia, assalaam alaikum.

Rabia Chaudry

Wa alaikum salaam. I just wanted to know, um, how, um, you are feeling after the court ruling?

Shamim Syed

We are so happy. And, because Yusef, he came down, said, said, "Mom, mom, look at Rabia." You know, "She texted me." And we are so happy.

Rabia Chaudry

And you spoke to Adnan, too?

Shamim Syed

He called me and say, Adnan, he say, "Mom, you know, I talked to [the] lawyer." And he was also so excited. He, you know, he said, "Finally," you know, "it looks like God accept[ed] our prayer."

Rabia Chaudry

Absolutely. Okay, thank you so much.

Shamim Syed

Thank you, Rabia.

Rabia Chaudry

Asalaamu alykum.

Shamim Syed

Wa alaikum salaam. [*phone hangs up*]

[0:55] Rabia Chaudry That was Adnan's mom, uh, who I call affectionately "Aunty Shamim", and she was speaking to me this morning about the recent order issued by the Maryland Court of Special Appeals. We're getting a lot of questions about what this order means. Uh, why has the Court of Specials Appeals, uh, remanded the case to the Circuit Court? What does that mean in terms of the post conviction? Does it mean Asia gets to testify? Does it mean Adnan gets a new trial? So, in order to break it down in layman's terms we thought we'd ask Colin to please--who, by the way, has done so much extensive writing and research on the legal aspects of the case--uh, to explain to our listeners what the implications of this order are.

[1:43] Colin Miller On Monday, there was a very interesting development in the current appeal by Adnan. Court of Special Appeals of Maryland issued a stay of that appeal and remanded the case back down to the Circuit Court. To understand what that means, let's go back to the start.

On February 28th, 1999, Adnan was arrested for the murder of Hae Min Lee. The next two days, March 1st and March 2nd, Asia McClain, a fellow Woodlawn student, sent Adnan letters in jail. According to those letters, Asia recalled seeing Adnan on January 13th, the day that Hae disappeared, in the Woodlawn Public Library, which is right next to the high school. Despite these letters, Asia was never called as an alibi witness at trial.

After Adnan was convicted, Rabia went to visit him in jail, and he showed her copies of the two letters sent by Asia. Using the phone number on one of those letters, Rabia reached out to Asia and eventually got her to sign an affidavit in which Asia recalled seeing Adnan in the Woodlawn Public Library up until 2:40 p.m. on January 13th. Asia also indicated she had never been contacted by defense counsel in connection to Adnan's trial.

Subsequently, Adnan had a direct appeal. A direct appeal is an appeal based upon errors that are evident from the trial record. Because Asia wasn't part of the trial record, she couldn't be raised as part of the direct appeal. Adnan lost that direct appeal. Thereafter, Adnan brought a collateral appeal. A collateral appeal is an appeal based upon errors that are not evident from the trial record. It's where he claims he received the ineffective assistance of counsel based upon numerous errors by his defense counsel.

In connection with the appeal hearing for that collateral appeal--and this is about a decade after Adnan was initially convicted--his attorney sends a private investigator to the West Coast to

contact Asia, to convince her to testify at the appeal hearing. This freaks Asia out. She's not sure why she was never contacted at the time of the initial trial, and she's worried about the possibility that she's helping someone who actually is guilty of murder. Based upon these concerns, she makes a call to Kevin Urick, one of the prosecutors from Adnan's initial trial. After that conversation with Urick, Asia doesn't testify at the appeal hearing. On the other hand, Urick does, and according to Urick's testimony at Adnan's appeal hearing in the Circuit Court, when he spoke to Asia, she told him she only wrote the affidavit due to pressure from Adnan's family and to get them off of her back. Understandably, based upon Urick's testimony and Asia not testifying, Adnan's appeal is denied. He is not given a new trial.

As a result, Adnan brings an appeal with the Court of Special Appeals of Maryland. And while that appeal is still lingering, again, we have *Serial* last fall, and Sarah Koenig reaches out to Asia. Asia has a very different story to tell about her interaction with Urick. And eventually, Asia submits an affidavit dated January 13th, 2015, exactly 16 years to the day after Hae Min Lee disappeared. Let's look at a couple of excerpts from that affidavit:

"He," meaning Urick, "told me there was no merit to any claims that Syed did not get a fair trial. Urick discussed the evidence of the case in a manner that seemed designed to get me to think Syed was guilty and that I should not bother participating in the case, by telling what I knew about January 13[th], 1999. Urick convinced me into believing that I should not participate in any ongoing proceedings." [...] "Urick and I discussed the affidavit that I had previously provided to Chaudry," meaning Rabia Chaudry. "I wanted to know why I was being contacted if they already had the affidavit on file and what the ramifications of that document were. I never told Urick that I recanted my story or affidavit about January 13[th], 1999. In, addition I did not write the March 1999 letters or the affidavit because of pressure from Syed's family. I did not write them to please Syed's family or to get them off my back."

Based upon this new affidavit, Adnan's attorney moves to supplement his application for leave to appeal the Circuit Court's denial of Adnan's motion for a new trial. That's the supplement made to the Court of Special Appeals of Maryland. So, the Court of Special Appeals of Maryland initially had a hearing on Adnan's appeal scheduled for June 9th, but in response to these new allegations by Asia. they decide, we can't resolve this case. They decide, in the interest of justice, these revelations need to be handled by the Circuit Court because the Court of Appeals can't handle issues that were not heard initially as part of the fact finding by the Circuit Courts.

They remand the case; that's what they did on Monday. They stayed the current appeal. They're not going to have the hearing in June. They sent the case back down to the Circuit Court for this purpose--purpose being Adnan can now file to reopen his post-conviction proceeding with the Circuit Court so that Asia can testify.

What's the standard the Court's going to use to decide whether to reopen the hearing? The question's going to be, is reopening the hearing in the interest of justice? The exact same standard the Court of Special Appeals used in remanding the case back down to the Circuit

Court. Maryland courts have never defined the phrase “in the interest of justice”. What they have done is to give several illustrations of cases in which it’s in the interest of justice to grant a new trial or to reopen a hearing.

One of those examples is prosecutorial misconduct. And so Adnan’s attorney in connection with his appeal has cited to a few Maryland cases. One of those cases is the case known as Campbell, another is a case known as Curry. These are cases in which, on the one hand, in one case the prosecutor dissuaded a witness from testifying at trial for the defense, and in another case the prosecutor misrepresented certain facts to the jury. And so [what] Adnan’s attorney is claiming is, this case is similar to Campbell and Curry; the Court, in the interest of justice, should reopen; we should be allowed to have Asia testify and present other evidence to prove ineffective assistance of counsel.

Prosecution has not yet cited any cases that stand against the proposition this hearing should be reopened. They’ll have their opportunity now to claim, here are reasons why Asia should not be allowed to testify.

In my opinion, based upon my review of Maryland case law, it’s exceedingly likely the Circuit Court will in fact reopen the proceeding and will allow Asia to testify.

Okay, assuming Asia testifies, the Circuit Court can do one of two things: one, they can stick with their prior decision and still deny Adnan a new trial; or two, based upon Asia’s testimony and other evidence, they can decide to grant Adnan a new trial. In either case, the losing party can appeal to the Court of Special Appeals of Maryland. That court has already granted an appeal, that court could either affirm the lower court or they could reverse it. And then the Court of Special Appeals is the intermediate appellate court in Maryland. Whoever loses in that court could appeal it up to the Court of Appeals of Maryland. So, ultimately, probably it would be the Court of Appeals of Maryland, the State Supreme Court in Maryland, that decides, assuming Asia’s allowed to testify, is her testimony enough to give Adnan a new trial?

[9:12] Rabia Chaudry Special thanks to Amar Nagi, our sound editor; Ramiro Marquez, who created our theme music; and Ballookey, who provided our logo. Dennis Robinson is our executive producer. You can find us on Facebook and Twitter. Our Twitter handle is [@Undisclosedpod](#). Tweet us your questions and comments using the hashtag #Undisclosed.

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